

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Second Periodic Review of the)	
Commission's Rules and Policies)	MB Docket No. 03-15
Affecting the Conversion)	
To Digital Television)	
)	
First-Round Digital Television)	
Channel Election of)	File No. BFRECT-20050209AKQ
WABC-DT, New York, NY)	
)	
First-Round Digital Television)	
Channel Election of)	File No. BFRECT-20050210ATK
WPIX-DT, New York, NY)	
To:		Media Bureau

**COMMENTS IN SUPPORT OF
EMERGENCY REQUEST FOR WAIVER**

Educational Broadcasting Corporation ("EBC"), licensee of noncommercial television station WNET, Channel 13, Newark, NJ ("WNET" or "Thirteen"), hereby supports the result sought by WABC-TV and WPIX(TV), New York, NY, in their Emergency Request for Waiver filed August 15, 2005 -- namely, the preservation of VHF broadcasting in the New York City market in the digital era. Enabling WABC-DT to broadcast post-transition on channel 7, particularly given the VHF band's superior building penetration capability, benefits the public interest. If WABC-DT is not permitted to operate on channel 7, then WNET, which must remain on channel 13 because its allotted DTV channel is out-of-core, could find itself the only former

World Trade Center broadcaster operating a VHF DTV facility in the New York market.¹ In a virtually all-UHF environment, consumers are unlikely to realize the need for the dual-band antennas required to receive Thirteen's VHF digital signal. And the burden of a costly communication campaign to explain this to consumers and retailers will fall squarely and solely on Thirteen.

BACKGROUND

For decades, the New York City metro area has been well served by seven analog VHF television stations — channels 2, 4, 5, 7, 9, 11 and 13 — in addition to a number of UHF stations. All seven VHF facilities formerly operated from the World Trade Center, from which they provided robust transmission service to those homes and businesses that rely on over-the-air broadcast television. As noted in the Emergency Request for Waiver, VHF signals' superior ability to penetrate buildings makes them more suitable for indoor reception in urban areas such as New York, where man-made structures dominate and viewers tend to rely on indoor antennas to receive over-the-air broadcast signals.²

Since September 11, 2001, New York City's VHF broadcasters have collaborated to restore both analog and digital television service by means of common antennas, at significant expense to each station (including noncommercial Thirteen).³ Currently, the high VHF band

¹ In addition to WABC-DT and WPIX-DT, we understand that WWOR-DT, Secaucus, NJ, desires to transmit in the VHF band. However, the licensee, Fox Television Stations, Inc., has elected channel 38 (the station's DTV allotment) in its First Round Conflict Decision in lieu of maintaining its first round election of the station's NTSC frequency, channel 9. This action is reportedly due to another station's refusal to negotiate meaningfully regarding predicted interference from WWOR-DT. E-mail from Molly Pauker to Form 383@fcc.gov re BFRCT-20050815AAP (Aug. 15, 2005).

² Emergency Request for Waiver at 20-21.

³ Each licensee had previously constructed full DTV facilities, either at the World Trade Center or (in the case of WCBS-DT and WNYW-DT) at the Empire State Building.

licensees (WABC-TV, channel 7; WWOR-TV, channel 9; WPIX, channel 11; and WNET, channel 13) broadcast in analog mode from the Empire State Building using a four-station combiner and a shared antenna. These same stations, together with WCBS-DT and WNBC-DT, also operate in digital mode with a different shared antenna, again from the Empire State Building.⁴

DISCUSSION

EBC supports the result sought by WABC-TV and WPIX in their Emergency Request for Waiver, namely, the preservation of VHF broadcasting in the New York market in the post-transition period.⁵ Retention of VHF transmissions in the all-digital era will not only enhance the viewing public's ability to receive popular commercial television broadcast programming, it may affect whether WNET-DT's award-winning noncommercial broadcasts are widely received over the air at all.

VHF Has Superior Building Penetration Capability

As stated above, in the post-9/11 world, the four high VHF band broadcasters that formerly operated from the World Trade Center have jointly designed, constructed and made operational two common antenna systems at the Empire State Building — one for analog transmissions in the VHF band, and the other (with WCBS-DT and WNBC-DT) for temporary digital transmissions in the UHF band. We understand that even before the events of September

⁴ The common Empire State Building DTV facility is all-UHF (WNBC-DT, channel 28; WPIX-DT, channel 33; WWOR-DT, channel 38; WABC-DT, channel 45; WCBS-DT, channel 56; and WNET-DT, channel 61), but two channels in the group are out-of-core channels.

⁵ As noted above, WWOR-TV also sought to resolve an interference conflict in order to enable it to maintain its original election of VHF channel 9 for WWOR-DT.

11, 2001, the intent of all four licensees has consistently been to operate their permanent digital facilities on the same frequencies as they now utilize for analog service — channels 7, 9, 11 and 13. Following the tragedy, as a corollary to their joint planning to restore analog service, the four licensees developed, for the first time, a common plan for future digital VHF service. As a result, the current shared Empire State Building analog VHF facilities -- constructed at significant cost to each of the four users -- were intended to be converted to digital service on the same four frequencies at the end of the digital transition.

Motivating the four high VHF band licensees to seek to broadcast digitally in the VHF band are the band's superior propagation qualities in densely populated urban areas such as New York, where concrete buildings predominate. In a 1963 study involving television signal measurements taken at over 3500 locations within 25 miles of the Empire State Building, George V. Waldo found that channel 7 has significantly better penetration than channel 31: in each of four different types of structures, the median loss of signal strength for channel 31 transmissions exceeded that for channel 7 transmissions, with the average indoor loss for channel 31 calculated to be 24 dB while that for channel 7 was only 20 dB. The study also found that building penetration losses for channel 31 transmissions were most profound with respect to reinforced concrete buildings, which dominate in New York City. Thus, if WABC-DT, WWOR-DT, WPIX-DT and WNET-DT could remain on channels 7, 9, 11 and 13 as planned, viewers' ability to receive these stations' commercial and noncommercial programming would be significantly enhanced.

In A Virtually All-UHF New York Market, Consumers Will Not Purchase The Dual-Band Antennas Needed To Receive Thirteen's VHF Signal

Unless WABC-DT is permitted to broadcast on channel 7, WNET-DT will be virtually alone as a VHF broadcaster in the New York City market in the post-transition era. Following the first round of DTV channel elections, NTSC channels 4 and 5 (WNBC and WNYW) received tentative DTV channel designations of UHF channels 28 and 44 respectively, while existing English- and Spanish-language New York-area UHF analog licensees also received DTV designations in the UHF band.⁶ We presume that WCBS-DT, which has an out-of-core DTV allotment and released its in-core NTSC frequency (channel 2) by making no first round DTV channel election, will ultimately be assigned a UHF DTV channel. Finally, absent grant of the Emergency Request for Waiver, it is also possible that WPIX-DT, which was able to maintain its first round election of channel 11 because it resolved an interference conflict identified by the Commission, may seek to amend that election to specify its assigned DTV channel, channel 33, to avoid becoming the only New York City commercial television station operating on a VHF channel post-transition. *See* Emergency Request for Waiver at 20 (“Without the presence and support of WABC and WWOR in the VHF band, the other VHF broadcasters also may be forced to abandon the VHF band. . .”).

⁶ UHF English-language stations in the market and their tentative DTV channel designations include WLIW-DT, channel 21 (co-owned with Thirteen), and WNYE-DT, channel 24. Spanish-language stations are WNJU-DT, channel 36; WFUT-DT, channel 41; and WXTV, channel 40. *See* FCC Public Notice, *DTV Tentative Channel Designations for 1,554 Stations Participating in the First Round of DTV Channel Elections*, DA 05-1743 at 18, 20 (June 23, 2005). In addition, WPXN-DT has recently indicated to the Commission that its first round election of channel 31 can be approved (*see* Letter from Scott. S. Patrick to Nazifa Sawez re BFRCCCT-20050811ABA (Aug. 11, 2005)).

As a result, it is quite possible that of the seven New York-area analog VHF broadcasters, only Thirteen will operate digitally in the VHF band.⁷ Unlike WPIX, WNET is not at liberty to abandon that band, since channel 13 is its only in-core frequency.⁸

Notwithstanding the superior propagation characteristics of the high VHF band vis-à-vis the UHF band, it is anticipated that both rooftop and indoor antennas will often be required to receive good quality over-the-air VHF as well as UHF DTV signals in New York's "concrete canyons," particularly where a residence's second or third TV set is not connected to a building's master antenna. And when all or nearly all commercial channels are transmitting in the UHF band, absent an extensive and costly campaign to educate both consumers and electronics retailers (the burden of which will fall squarely on Thirteen), consumers are far more likely to purchase a UHF-only receiving antenna than the more expensive and bulkier dual-band antenna needed to receive both UHF stations and VHF channels such as WNET-DT. For those who rely on over-the-air transmissions (predominantly lower-income families, minorities and the elderly), the unfortunate result will be the sudden, unexpected inability to receive Thirteen's outstanding noncommercial public affairs, entertainment, children's and informational programming.⁹ By permitting WABC-DT to transmit on channel 7 and thereby providing certainty that WPIX-DT will remain on channel 11, the Commission will assure that there is sufficient consumer and

⁷ Noncommercial broadcast station WNJB, New Brunswick, New Jersey, will also operate post-transition in the VHF band, having received a tentative DTV designation of channel 8; it currently operates in analog mode on UHF channel 58. DA 05-1743 at 18.

⁸ Thirteen's DTV assignment is channel 61.

⁹ A 2004 poll of 1000 adults indicated that in the New York DMA, 29.1% of viewers surveyed relied in whole or in part on over-the-air television service, and 9.1% relied *entirely* on such service, i.e., did not subscribe to cable, satellite, or any other pay television service. Of these non-subscribers, 58.5% had annual household incomes below \$50,000; 31.5% had household incomes of less than \$25,000; 60.6% were non-whites; and 42.7% were adults age 50 and older. Comments of The Walt Disney Company in MB Dkt. No. 04-210 at 1-2 & Data Tables 1, 2 (Aug. 11, 2004).

retailer awareness of the VHF band to foster widespread purchases of the dual-band indoor and rooftop antennas needed to support viewing of Thirteen.¹⁰

CONCLUSION

For the foregoing reasons, the Commission should permit WABC-TV to elect channel 7 for its digital facility.

Respectfully submitted,

**EDUCATIONAL BROADCASTING
CORPORATION**

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¹⁰ We also note that should WABC-DT, WWOR-DT and WPIX-DT all vacate the VHF band, WNET alone will be required to pay the operating costs of the four-station high VHF band antenna now being utilized at the Empire State Building.

CERTIFICATE OF SERVICE

I, Evangula Brown, certify that a copy of the foregoing “Comments in Support of Emergency Request for Waiver” filed on behalf of Educational Broadcasting Corporation was sent by first-class mail this 1st day of September, 2005 to each of the following:

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